

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAWRENCE E. SCHWIGER,)

Petitioner,)

vs.)

JACK PALMER, *et al.*,)

Respondents.)

3:09-cv-0454-LRH-VPC

ORDER

Lawrence Schwiger, a Nevada prisoner, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondents have filed a motion to dismiss and petitioner requests the court to reconsider his motion to appoint counsel. Petitioner has also drafted and delivered letters addressed directly to the court which address issues not presented as claims in his petition.

Upon further review, the Court will grant petitioner's request and will appoint counsel. The petition filed in this action includes seventeen claims and has attached a large volume of exhibits and supporting documentation. Moreover, the pending motion to dismiss raises questions of both timeliness and procedural default and exhaustion. The question of timeliness appears to be particularly close, making the matter a complex one. Furthermore, petitioner faces a lengthy sentence. Petitioner has also corresponded to both the Court and opposing counsel in a manner that may not be productive.

Therefore, the Federal Public Defender for the District of Nevada (FPD) shall be appointed to represent petitioner. If the FPD is unable to represent petitioner, due to a conflict of interest or other reason, then alternate counsel for petitioner shall be located, and the Court will enter a separate order

1 appointing such alternate counsel. In either case, counsel will represent petitioner in all future federal
2 proceedings relating to this matter (including subsequent actions) and appeals therefrom, unless
3 allowed to withdraw.

4 Petitioner is advised that upon appearance of counsel, he must rely upon counsel to address
5 his issues and claims with the respondents and with the court and that while represented he is
6 foreclosed from further direct correspondence or other contact with either the respondents or the
7 court on his own behalf.

8 **IT IS THEREFORE ORDERED** that petitioner's Motion for Appointment of Counsel
9 (docket #22) is **GRANTED**. The Federal Public Defender of the District of Nevada (FPD) shall be
10 appointed to represent petitioner.

11 **IT IS FURTHER ORDERED** that the Clerk shall **ELECTRONICALLY TRANSMIT** to
12 the FPD a copy of this Order, together with a copy of the petition for writ of habeas corpus and its
13 attachments (docket #4). The FPD shall have thirty (30) days from the date of entry of this Order to
14 indicate to the Court if there exists any reason why the office of the FPD is unable to represent
15 petitioner in these proceedings.

16 **IT IS FURTHER ORDERED** that the Clerk shall **RESUBMIT** this case to the Court after
17 the FPD has appeared as counsel for petitioner, after the FPD has indicated its inability to represent
18 petitioner, or after thirty (30) days from the entry of this Order, whichever occurs first.

19 **IT IS FURTHER ORDERED** that, after counsel has appeared for petitioner in this case, the
20 Court will issue a scheduling order, which will, among other things, address briefing on the issue of
21 the petition's timeliness and, if appropriate, set a deadline for the filing of an amended petition.

22 **IT IS FURTHER ORDERED** that the motion to dismiss the petitioner (docket #13) is
23 **DENIED WITHOUT PREJUDICE** pending further proceedings.

24 DATED this 26th day of May, 2010.



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27 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE